

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

VICTORIA YVONNE BENAVIDEZ,

Plaintiff,

vs.

CIV NO. 09-0621 CG

MICHAEL J. ASTRUE,
Commissioner of the
Social Security Administration,

Defendant.

ORDER GRANTING EAJA FEES

THIS MATTER is before the Court on Plaintiff's *Motion for Attorney Fees Under Equal Access to Justice Act with Memorandum in Support Thereof* ("Motion") (Doc. 24) and its accompanying *Affidavits* of attorney and legal assistant time (Docs. 24-1, 24-2, 24-3), which were filed on August 11, 2010. Defendant filed his response on August 26, 2010, and he does not oppose the *Motion*. *Defendant's Response to Plaintiff's Motion for Attorney Fees Pursuant to EAJA* (Doc. 27).

IT IS THEREFORE ORDERED that Plaintiff's *Motion* (Doc. 24) is GRANTED, and Plaintiff Victoria Yvonne Benavidez¹ is authorized to receive \$3,989.70 in fees for payment to her attorneys for services before this Court.²

IT IS SO ORDERED.



THE HONORABLE CARMEN E. GARZA
UNITED STATES MAGISTRATE JUDGE

¹ See *Manning v. Astrue*, 510 F.3d 1246, 1251 (10th Cir. 2007) (requiring EAJA fees to be paid to the claimant).

² In the future, if Ms. Benavidez' counsel is also awarded attorney fees pursuant to 42 U.S.C. § 406(b), they shall refund the smaller award to Ms. Benavidez pursuant to *Gisbrecht v. Barnhart*. 535 U.S. 789, 796 (2002) ("Fee awards may be made under both [EAJA and § 406(b)], but the claimant's attorney must refund to the claimant the amount of the smaller fee." (internal quotation marks and alteration omitted)).